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October 25, 2013

Via Email (pdf) and Regular Mail

Elizabeth (Thanne) Berg
US EPA Region 9
Office of Regional Counsel
75 Hawthorne Street
San Francisco, CA 94105

Abhik Dutta, Civil Investigator
U.S. EPA, Region 9
75 Hawthorne Street, SFD-7-5
San Francisco, CA 94105

**Re: General Notice of Potential Liability, Yosemite Creek Superfund Site
San Francisco County, California**

Dear Ms. Berg and Mr. Dutta:

This letter is written on behalf of Coca-Cola Refreshments USA, Inc. ("CCR USA"), and requests that U.S. EPA reconsider, and thereafter retract, its General Notice of Potential Liability to CCR USA, for the reasons set out below. As you know, CCR USA (via predecessor entities) owned real property in the vicinity of the Yosemite Creek Superfund Site (the "Site") from approximately January 1938, to June 1998. Neither CCR USA nor its predecessors actually used the property until 1967, when an on-site non-alcoholic beverage syrup production facility (the "Facility") was constructed.¹ The Facility operated until 1996 and following its closure, the property was sold in 1998.

Your office provided us with a CD of "key" documents this summer (July 2013), which we have now had the opportunity to review. Those documents were provided to CCR USA at my request following an in person meeting at U.S. EPA's offices on June 6, 2013, where on behalf of U.S. EPA, you represented to me that the basis for CCR USA's potential liability at the captioned site was based on CCR USA's historic (and permitted), discharges to the sanitary sewer system operated by the City and County of San Francisco. More specifically, you

¹ From 1938 until 1948, the property sat idle. From 1948 through 1966, the property was commandeered by the U.S. Navy for use as barracks for Navy personnel.



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indicated that the finding of potential responsibility rests solely on U.S. EPA's review of and reliance on detections of lead in monitoring reports regarding discharges from the Facility to the City's sewer treatment works.

The CD you provided to us in July contained a number of documents, including documents CCR USA provided to U.S. EPA as part of CCR USA's timely response to U.S. EPA's Section 104(e) information request. The key document among these from an evidentiary perspective appears to be the undated document titled, "Description of Operations/Use of Chemical(s) of Concern (lead, PCBs)", which we believe was created by U.S. EPA, and which contains citations to certain documents (identified by U.S. EPA document number) referencing dates, activities and events over a period of years. In terms of potential CCR USA liability, the references appear to focus on the possible discharge of lead only, as PCBs are not associated with CCR USA or the Facility.

In reviewing the "Descriptions of Operations/Use of Chemicals" document, there does not appear to be any evidentiary or other support for U.S. EPA's theory of liability vis-à-vis CCR USA, relative to the Site and investigation and anticipated cleanup activities. The first several paragraphs of the document provide background information concerning the facility and CCR USA's activities, and cite to CCR USA's March 15, 2013 response to U.S. EPA's information request under Section 104(e) of CERCLA. These are innocuous references, confirming the Facility handled primarily food-grade materials as a non-alcoholic beverage syrup manufacturing plant, changes to the Facility over time, including the construction of a wastewater treatment shed (in 1980), and third-party transportation of the very small amounts of hazardous materials generated by CCR USA to licensed off-site facilities. Removal and regulatory closure of three underground storage tanks is also documented.

Towards the end of the "Descriptions of Operations/Use of Chemicals" document, there is a reference to an Industrial Waste Inspection Report from January 11, 1977, and the statement that the Report "provides a more detailed description of the syrup creation process from the pretreatment of city water, to the addition of various chemicals and storage, to the discharge of wastewater into the drains." But this document likewise does not reveal a link to or show a nexus between CCR USA's activities and the conditions giving rise to liability for sediment investigation and cleanup/containment at Yosemite Creek. Rather, the Report documents some instances of elevated pH in discharges to the City sanitary sewer system, and concern by City inspectors regarding Total Suspended Solids ("TSS") and Biological Oxygen Demand ("BOD"). There is no identified issue regarding claimed discharges of lead or other metals in the Inspector's Report. There is a discussion of the use of ferrous sulfate, but that and other chemicals mentioned were used by CCR USA to pretreat water coming from the City for later use at the Facility as production water. Again, only pH was identified as an issue related to CCR USA's discharge to the City sanitary sewer.



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“Miscellaneous documents” are identified in the last paragraph of the “Descriptions of Operations/Use of Chemicals” document. These documents likewise do not support CCR USA being identified as a PRP relative to the Site, as they are simply a compilation of information regarding chemicals stored by CCR USA for use in its operations. We could find no discharge monitoring reports, monthly or otherwise, among the documents provided on the CD, which U.S. EPA contends supports its designation of CCR USA as a PRP and issuance of the General Notice letter.

Please contact me once you have had an opportunity to review this letter. We appreciate your willingness to review and reconsider U.S. EPA’s designation of CCR USA as a PRP via the April 3, 2013 General Notice letter. We look forward to working with you. Thank you for your courtesy and cooperation.

Sincerely,

Robert L. Hines

RLH:crm

cc: Elizabeth T. Irvin, Environmental, Health & Safety Counsel, CCR USA
Vail T. Thorne, Senior Environmental, Health & Safety Counsel, The Coca-Cola Company
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